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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

03 Cr. 1197 (SHS)

5 UZAIR PARACHA,

6 Defendant.

Conference

7 -----x

8 New York, N.Y.
9 August 10, 2018
11:14 a.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 BY: KARL N. METZNER

ELIZABETH ANNA HANFT

Assistant United States Attorney

18 LAW OFFICES OF JOSHUA L. DRATEL, P.C.

19 Attorneys for Defendant

20 BY: JOSHUA L. DRATEL, ESQ.

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your names
3 for the record.

4 MR. METZNER: Karl Metzner and Elizabeth Hanft for the
5 government. Good morning, your Honor.

6 THE COURT: Good morning to both of you.

7 MR. DRATEL: Good morning, your Honor. Joshua Dratel
8 for Mr. Paracha, who's standing next to me.

9 THE COURT: Good morning, Mr. Paracha. It's good to
10 see you again. Please be seated.

11 It's good to see all of you again.

12 Obviously, everyone is aware of my opinion and order
13 dated July 3 in which I granted defendant's motion for a new
14 trial. Now that Mr. Paracha is here in the metropolitan area,
15 I thought I should bring you in for a status conference to see
16 where we were going.

17 The government requested an extension of its time to
18 appeal in order to have time to decide what it was going to do,
19 and I granted that request.

20 The last day now for the government to file a notice
21 of appeal is September 4. So basically the parties should tell
22 me where we stand.

23 Mr. Metzner.

24 MR. METZNER: Certainly, your Honor. You summarized
25 where we are. We're deciding that issue, among the relevant

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1 individuals in the government who would have to decide these
2 things, about whether to file an appeal of your Honor's order.
3 In the meantime, Mr. Dratel and I have been discussing whether
4 there is some way that we might be able to resolve this short
5 of that, but I want to emphasize that the government is fully
6 committed to trying this case again if it becomes necessary,
7 and there's no resolution in the offing.

8 THE COURT: Thank you. I'm not going to involve
9 myself in any discussions. I do think it makes sense to see if
10 this can be resolved, obviously, short of a trial.

11 MR. DRATEL: Thank you, your Honor. And Mr. Metzner
12 has actually described the current situation. The only thing
13 that I would add is that it's our intention -- and I've told
14 Mr. Metzner this, that it's our intention to submit a bail
15 application for Mr. Paracha at some point probably within the
16 next two weeks. I'm meeting with family members in terms of
17 what's available potentially as security, and I'll go to the
18 government first to see if we can have an agreement and see if
19 there are any areas of agreement in terms of interviewing
20 sureties and things like that, then to come back to the Court,
21 if we have an agreement, and/or if we don't, then we'll make an
22 application, but I intend to do it in writing within the next
23 two weeks.

24 THE COURT: All right. I'm a bit surprised to hear
25 you say that given the fact that my opinion and order calls for

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1 a new trial, but the charges obviously are still outstanding
2 and the charges are of providing material support to Al Qaeda,
3 which are substantial charges.

4 MR. DRATEL: Yes, your Honor, I understand that, but I
5 think that given the nature of the situation and the time
6 that's passed, and some other factors that the Court may not be
7 aware of, such as some health considerations and other factors
8 that have --

9 THE COURT: All right. Well, of course I'll take a
10 look at it. I think efforts really should be devoted to
11 attempting to resolve this shy of a trial, given the amount of
12 time that's passed.

13 MR. DRATEL: I understand, your Honor, and there won't
14 be any diminution of effort in that direction because of a bail
15 application.

16 THE COURT: All right. Anything I can do for the
17 government? I think we should set another date. When do the
18 parties want another conference to see where we are?

19 MR. METZNER: Perhaps sometime in mid-September, your
20 Honor.

21 MR. DRATEL: I think that's right, your Honor, because
22 that would be following the decision whether the government is
23 appealing or not, and it gives us a month to continue what
24 we're doing now. So I think mid-September is useful.

25 THE COURT: All right. Ms. Blakely, after the

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1 holidays?

2 September 20, 4 p.m., for a conference.

3 Anything else, government?

4 MR. METZNER: Yes, your Honor. If you would indulge
5 me for a moment. With respect to the speedy trial clock, the
6 government's position is that because the government is still
7 contemplating an appeal of your Honor's order and the time for
8 that has not run yet, the speedy trial clock has not started to
9 run again yet on the new trial order that your Honor entered
10 in, so we don't need an exclusion of time. If and when one
11 becomes necessary, the government would make an appropriate
12 application.

13 MR. DRATEL: I don't dispute the government's legal
14 interpretation. We would not object to an exclusion if the
15 Court found it necessary.

16 THE COURT: What provision is the government looking
17 at in terms of no time running? Because I actually thought it
18 was an open question, so show me.

19 It sounds like the defense is open to an exclusion.
20 Is the government opposed to an exclusion?

21 MR. METZNER: Absolutely not, your Honor, and for
22 practical purposes, if it makes sense to enter one now in case
23 there's some ambiguity, of course we would be amenable to such
24 an exclusion. The provision that we're relying on is 3161(e),
25 and it provides that the trial shall commence within 70 days

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1 from the date the action occasioning the retrial becomes final,
2 and the last two words is what the government is relying on
3 here, the finality of your Honor's order entering the new
4 trial.

5 THE COURT: Let me look at it.

6 So you're interpreting the phrase "the retrial becomes
7 final" as including all of the time until an appeal is decided
8 and any appeal from that is decided, if the government intends
9 to appeal, would be excluded under this provision.

10 MR. METZNER: Yes, your Honor, that's our
11 interpretation, consistent with scenarios like habeas motions,
12 the question of the timeliness of the 2255, for example, being
13 one year after the conviction becomes final. That's
14 interpreted the same way.

15 THE COURT: All right. Well, I see what you're
16 saying. I'm going to leave it to the government. I mean, the
17 defense is saying if an exclusion is entered, they'd be
18 amenable to that.

19 MR. METZNER: Your Honor, it would be silly of me not
20 to take them up on it. The government would request an
21 exclusion of time through September 20th to have the
22 discussions that we've already noted.

23 THE COURT: All right. I'll grant the exclusion under
24 3161(h)(7)(A) with the finding that the ends of justice
25 outweigh the interests of the public and the defendant in a

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1 speedy trial. The purpose is for the parties to focus on
2 attempting to resolve this matter. Exclusion is from today
3 until September 20. And I do hear the government's position
4 under 18 U.S.C. 3161(e).

5 I'll see everybody on September 20 at 4 p.m.

6 MR. DRATEL: Thank you, your Honor.

7 THE DEPUTY CLERK: All rise.

8 THE COURT: And of course I'll entertain, Mr. Dratel,
9 any application that's made.

10 MR. DRATEL: Thank you.

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